

In the Office Action, claims 136-151, 163, 189, and 190 were rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 5,913,318 to Gueret. Applicant does not necessarily agree with the Examiner's assertions about the present claims and the patented claims. Regardless, Applicant will consider submitting a Terminal Disclaimer upon receiving an indication that the claims are otherwise allowable.

In addition, claims 136, 137, 146, 148-152, 156, 161, 163, 174, 175, 179, 189, and 190 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 3,179,108 to Bloch et al. (Bloch). Applicant respectfully traverses this rejection.

Regarding independent claim 136, Bloch does not disclose or suggest an applicator including, *inter alia*, "an elongated flexible support having a first planar surface and a second planar surface." The Examiner alleges that Fig. 3 of Bloch discloses a cross-section of the absorbent swab 15 that "has what can be considered upper and lower planar surfaces." Applicant disagrees and submits that the views created by a cross-section of the absorbent swab 15 are not planar surfaces. A "surface" refers to any face of a solid, whereas a "cross-section" is a drawing of a plane exposed by cutting through something. American Heritage College Dictionary, 3d ed., 1997. The alleged planar surfaces of Fig. 3 do not define any face of the absorbent swab 15, but instead are created for illustration purposes only by a cross-section cut through the swab 15. Accordingly, Bloch does not disclose, teach, or suggest a support having a first planar surface and a second planar surface, as recited in claim 136. Therefore, the § 102(b) rejection of claim 136 should be withdrawn.

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In an apparent statement directed to claim 156, the Examiner asserted that in Bloch, the “layers of spongy flexible material appears [sic] to be thicker than [the] support.” Applicant respectfully disagrees and reminds the Examiner that when the disclosure gives no indication that the drawings are to scale, “it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.” *Hockerson-Halberstadt, Inc. v. Avia Group Int’l*, 222 F.3d 951, 956, 55 U.S.P.Q. 1487, 1491 (Fed. Cir. 2000).; *see also*, M.P.E.P. § 2125. Bloch does not indicate that the drawings are to scale and does not disclose the size of, or dimensional relationships between, the stick 16 and the wads 17. The Examiner alleges that the disclosures of Bloch “must be evaluated for what they fairly teach one of ordinary skill in the art.” Applicant disagrees and submits that under the guidance of M.P.E.P. § 2125 and *Hockerson-Halberstadt, Inc. v. Avia Group Int’l*, Fig. 3 of Bloch can not be relied on to show “the spongy material thicker than the support” because the Bloch specification is completely silent on the issue. Accordingly, Bloch cannot be relied upon for a dimensional relationship that “appears to be” in the drawings.

Claims 137, 146, 149-152, 156, 161, 163, 174, 175, 179, 189, and 190 depend from claim 136 and, therefore, are allowable for at least the same reasons claim 136 is allowable.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

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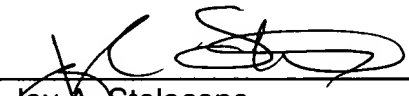
The Examiner is invited to call the undersigned at (202) 408-4252 if the Examiner deems that a telephone conversation would further the prosecution of the application.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: July 23, 2003

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